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Trustee

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re
GIRARDI KEESE,

Debtor.

Case No. 2:20-bk-21022-BR

Chapter 7

**SIXTH MOTION FOR ORDER
AUTHORIZING CHAPTER 7 TRUSTEE
TO:**

**(A) OPERATE THE BUSINESS OF THE
DEBTOR ON A LIMITED BASIS
PURSUANT TO 11 U.S.C. § 721; AND**

**(B) MAINTAIN CURRENT STATUS OF
ANY NEWLY DISCOVERED TRUST
ACCOUNTS**

**MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
ELISSA D. MILLER IN SUPPORT**

Date: December 13, 2022
Time: 10:00 a.m.
Ctrm.: 1668
255 E. Temple Street
Los Angeles, California 90012

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1 **TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE:**

2 Elissa D. Miller, the chapter 7 trustee (the "Trustee") for the bankruptcy estate (the
3 "Estate") of Girardi Keese (the "Debtor"), submits this Sixth Motion for Order Authorizing
4 Chapter 7 Trustee to: (A) Operate the Business of the Debtor on a Limited Basis
5 Pursuant to 11 U.S.C. § 721; and (B) Maintain Current Status of Any Newly Discovered
6 Trust Accounts (the "Motion"). In support of the Motion, the Trustee submits the following
7 memorandum of points and authorities and the attached declaration of Elissa D. Miller.
8

9 **I. INTRODUCTION**

10 The Court previously granted the Trustee's five prior motions requesting that the
11 Trustee have authority to operate the business of the Debtor on a limited basis without
12 controversy. The Trustee's request is no different now. The Trustee continues to make
13 progress since the Trustee's prior motions requesting authority to operate the business of
14 the Debtor on a limited basis were granted. With authority to operate, the Trustee has
15 been able to nearly conclude the transitioning of the Debtor's cases, resulting in the
16 protection of both clients and the Debtor's interests in its legal fees and costs. Similarly,
17 the Trustee has safeguarded the Debtor's rights to attorneys' fees and costs in certain of
18 the Debtor's former cases by filing notices of lien. In addition, the Trustee has disbursed
19 and/or facilitated the disbursement of funds owed to clients as certain cases are resolved.
20 In short, operation of the Debtor's business on a limited basis has allowed the Trustee to
21 enhance the value of the Estate and ensure that clients remain protected.¹

22 At the same time, the Trustee has had to deal with the Debtor's client files,
23 including but not limited to engaging in the arduous and ongoing task of safeguarding,
24 cataloguing and organizing all of the client files and organizing and appropriately
25 destroying those for which permission has been granted
26

27 _____
28 ¹ Former clients continue to contact the Trustee periodically regarding cases of which the Trustee
was not previously aware.

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The Court previously authorized the Trustee to operate the Debtor on a limited basis through December 31, 2022. Although much has been accomplished, more work remains to be done. The Court recently authorized the Trustee to enter into agreements for a new office space for the Debtor, and to use a new storage service that will store, index, and retrieve the Debtor's physical records at a secure, off-site location and destroy those for which permission has been granted. These new agreements will allow the Trustee to continue her work administering the Estate at a lower rate, ultimately saving the Trustee from burdensome expenditures and preserving the Estate's value for all creditors. At the same time, the Trustee is also investigating and commencing her litigation efforts to assert further claims on behalf of the Estate.

As with the prior five motions, the Trustee is not seeking to expand her authority but, rather, to continue the authority previously granted by the Court and recognized as essential to administer the Estate. The continuation of the Trustee's authority is critical and any interruption to the Trustee's limited authority to operate could potentially reverse the Trustee's progress and prejudice interested parties. Authority to operate on a limited basis will enable the Trustee to preserve and enhance the value of the Estate, protect the Debtor's clients, and continue the Trustee's progress in administering the Estate. The requested relief is necessary, narrowly tailored and in the best interest of the Estate, its creditors and the Debtor's clients. For these reasons, the Motion should be granted.²

II. FACTUAL BACKGROUND

A. The Debtor's Bankruptcy Case

The Debtor was once a thriving law firm based in Los Angeles, California. On December 18, 2020 (the "Petition Date"), petitioning creditors Jill O'Callahan, as successor in interest to James O'Callahan, Robert M. Keese, John Abassian, Erika Saldana, Virginia Antonio, and Kimberly Archie (collectively, the "Petitioning Creditors")

² Filed concurrently herewith is the Trustee's seventh motion to use cash collateral for this purpose.

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1 filed an involuntary chapter 7 bankruptcy petition against the Debtor.³ Prior to the
2 Petition Date, the Debtor practiced in the areas of personal injury, defective products,
3 sexual abuse, toxic torts, business law, employment law, and aviation law.

4 On December 24, 2020, the Petitioning Creditors filed a *Motion for Appointment of*
5 *Interim Trustee Pursuant to 11 U.S.C. § 303(g)* [Docket No. 12]. The Court entered an
6 order granting the motion on January 5, 2021 [Docket No. 45]. On January 6, 2021, the
7 Trustee was appointed as the interim trustee [Docket No. 50].

8 On January 13, 2021, the Court entered an *Order Directing: (1) The Clerk of Court*
9 *to Immediately Enter an Order for Relief under Chapter 7; (2) The United States Trustee*
10 *to Immediately Appoint a Chapter 7 Trustee; (3) The Debtor to File All Schedules and*
11 *Related Documentation for Chapter 7 Case within Fourteen Days of the Entry of this*
12 *Order; and (4) Vacating February 16, 2021 Status Conference* [Docket No. 68]. On
13 January 13, 2021, the Clerk of Court entered an order for relief against the Debtor
14 [Docket No. 69], and the Trustee was appointed and accepted her appointment in the
15 Debtor's case [Docket No. 71].

16 **B. The Debtor's Cases**

17 As of the Petition Date, the Debtor was counsel of record in a significant number of
18 cases which were undertaken on a contingency basis. These cases were at varying
19 stages. Among the cases are those that have settled or where settlement is imminent,
20 and those that have been reduced to judgment (collectively, the "Resolved Cases").
21 There are also cases where clients of the Debtor have terminated or will terminate their
22 relationship and have engaged or will engage substitute counsel (collectively, the
23 "Terminated Cases").

24
25
26
27 ³ The Petitioning Creditors also filed an involuntary chapter 7 bankruptcy petition against Thomas
28 Girardi, which is currently pending as Bankruptcy Case No. 2:20-bk-21020-BR (the "Thomas Girardi
Bankruptcy Case").

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1 **C. The Debtor's Bank Accounts**

2 The Trustee previously determined that, in addition to deposit and operating
3 accounts, the Debtor maintained accounts at the following banks⁴:

4 (1) Citizens Business Bank – blocked minor accounts, IOLTA (State Bar Trust
5 Accounts) and a trust account for the benefit of four clients;

6 (2) Torrey Pines Bank – blocked minors accounts; and

7 (3) Citibank – a blocked settlement account for the benefit of a third party
8 (which now has a zero balance);

9 (4) Preferred Bank – IOLTA.

10 These IOLTA, blocked and other trust accounts are collectively referred to as the
11 "Existing Trust Accounts." Prior orders allowed the Trustee to maintain these accounts
12 pending further orders. Additional bank accounts may be discovered during the Trustee's
13 continuing administration of the Estate. See Declaration of Elissa D. Miller.

14 **D. The Debtor's Law Offices and Upcoming Move**

15 For over 20 years, the Debtor operated out of two adjoining buildings owned by
16 non-Debtor parties located in Los Angeles, California. One building is located at 1122
17 Wilshire Boulevard, Los Angeles, California ("1122 Wilshire Building"), and the other is
18 located at 1126 Wilshire Boulevard, Los Angeles, California ("1126 Wilshire Building").

19 The Estate continued to use both the 1122 Wilshire Building and the 1126 Wilshire
20 Building as storage facilities post-bankruptcy. Each of the buildings historically housed
21 attorneys and staff and included storage and other space to support the Debtor's
22 practice. In early March 2021, the owners of the 1122 Wilshire Building listed it for sale.
23 On or about June 2021, the owners contracted to sell the 1122 Wilshire Building. Once
24 the sale of the 1122 Wilshire Building closed, the Trustee did not delay in vacating. The
25 Trustee spent thousands of dollars to clear the trash from the 1122 Wilshire Building,

26 _____
27 ⁴ The Debtor also maintained small IOLTA accounts at Nano Banc, Wells Fargo Bank and U.S.
28 Bank. Each of those accounts were closed, either by the bank upon learning of the case or at the request
of the Trustee because the bank would not change the signatory. The funds are separately identified and
have been placed in a segregated account under the Trustee's control.

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1 ultimately leaving it in broom swept condition and transferring the remaining files and
2 personal property to the 1126 Wilshire Building for storage. In addition, the Trustee
3 previously concluded an online personal property auction sale that resulted in significant
4 cash plus the removal of most of the Debtor's personal property, leaving the Trustee with
5 primarily client files remaining.

6 Despite the Trustee clearing out personal property unnecessary to administer the
7 Estate, the costs associated with storing the records, servers, and other equipment at the
8 1126 Wilshire Building are not insignificant. The Estate has not only faced rising utility
9 costs, but also potential and irreversible damage to the Debtor's records due to water
10 pipe issues and security issues while using the 1126 Wilshire Building as a storage
11 facility. In short, the costs associated with storing and maintaining the records, servers,
12 and other equipment at the 1126 Wilshire Building were growing too expensive along with
13 other risks. Exercising her business judgment, the Trustee determined that continued
14 storage of the Debtor's records at the 1126 Wilshire Building was no longer prudent.
15 Subsequently, the Trustee filed two motions to abandon and dispose of certain records
16 being stored at the 1126 Wilshire Building, which were ultimately granted by the Court.
17 The Trustee also filed a *Motion for Order Authorizing the Trustee to Enter into: (A) Office*
18 *Agreement with Regus Management Group, LLC; and (B) Storage Service Agreement*
19 *with Corodata Records Management, Inc.* [Docket No. 1373] ("Motion to Approve
20 Agreements").

21 Under the Motion to Approve Agreements, the Trustee sought Court approval of
22 an agreement for a new, less expensive office space (the "Office Space") to both store
23 the Debtor's servers, equipment, and computers and to access the Debtor's electronic
24 files. The Trustee also sought Court approval of a separate agreement to utilize a
25 storage service ("Storage Service") to move, organize, and store the Debtor's physical
26 files at a secure, off-site location. As set forth in the Motion to Approve Agreements, the
27 Office Space and the Storage Service will ultimately result in cost savings to the Estate
28 while also providing the Trustee and her team with a secure access point to review and

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1 retrieve the Debtor's electronic and physical records for the Trustee's work administering
2 the Estate, including her recent effort investigating and prosecuting claims on behalf of
3 the Estate. On October 25, 2022, the Court entered an order granting the Motion to
4 Approve Agreements. Accordingly, the Trustee and her field agent are coordinating with
5 the Storage Service to move the Debtor's contents out of the 1126 Wilshire Building in
6 the coming weeks.

7 **E. The Debtor's Record System**

8 Prior to the Petition Date, the Debtor stored and maintained its case files in
9 physical and electronic record systems. However, the electronic files may not be a
10 duplicate of the physical files, and vice versa. The digital records were stored on two
11 different programs depending on the type of case. For mass tort litigation cases, the
12 Debtor primarily stored its records and files in a proprietary electronic program. For all
13 other cases and general office files as well as some of the mass tort files, the Debtor
14 stored its records and files in an electronic program called iManage. Finally, cost ledgers
15 and other related records were maintained in another program called Sage Accounting
16 Software. In the past, the Trustee relied on former employees of the Debtor in order to
17 navigate the Debtor's complicated file and record system more efficiently.⁵ That reliance
18 is no longer as critical as it once was as the Trustee and her team have become more
19 familiar with the file and record system. See Declaration of Elissa D. Miller.

20 **F. The Trustee's Prior Operating Motions and Sixth Cash Collateral**
21 **Motion**

22 The Trustee has previously filed five motions requesting authority to operate the
23 business of the Debtor on a limited basis. The Court has granted all five motions. Most
24 recently, on May 31, 2022, the Trustee filed her *Fifth Motion for Order Authorizing*
25 *Chapter 7 Trustee to: (A) Operate the Business of the Debtor on a Limited Basis*
26 *Pursuant to 11 U.S.C. § 721; and (B) Maintain Current Status of Any New Discovered*

27 _____
28 ⁵ There was no consistency as to how Debtor maintained either its electronic or hard files. Each attorney's secretary appears to have utilized a different filing and case management system.

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1 *Trust Accounts* [Docket No. 1187] (the "Fifth Operating Motion"). On June 29, 2022, the
2 Court entered an order granting the Fifth Operating Motion through December 31, 2022
3 [Docket No. 1246]. A copy of the order granting the Fifth Operating Motion is attached as
4 Exhibit "1."

5 Also on May 31, 2022, the Trustee filed the *Chapter 7 Trustee's Sixth Motion for*
6 *Order Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363 and Federal Rule*
7 *of Bankruptcy Procedure 4001(b)* (the "Sixth Cash Collateral Motion") [Docket No. 878].
8 On July 7, 2022, the Court entered an order granting the Sixth Cash Collateral Motion
9 [Docket No. 927]. Currently, the Trustee has authority to use cash collateral through and
10 including December 31, 2022.

11
12 **III. LIMITED OPERATING RELIEF REQUESTED**

13 As noted above, the Court has entered an order authorizing the Trustee to operate
14 the business of the Debtor on a limited basis through December 31, 2022. The Trustee
15 seeks authority to continue operating the business of the Debtor on a limited basis
16 through June 30, 2023 - without prejudice to the Trustee's right to request additional or
17 continuing authority to operate. The Trustee is seeking authority to operate the business
18 of the Debtor consistent with the scope previously granted by the Court as detailed
19 below. At the same time, the Trustee anticipates filing concurrently a seventh motion for
20 authority to use cash collateral to fund the necessary expenses of the Debtor's limited
21 operations for a period to run concurrently with the time requested in the instant motion.

22 **A. The Requested Relief Regarding the Resolved Cases**

23 With respect to the Resolved Cases, the Trustee seeks authority to take all
24 reasonable actions and execute all documents necessary to issue to clients their agreed-
25 upon portion of funds remitted to the Debtor and/or Trustee related to the Resolved
26 Cases. This authorization would include, without limitation, authority for the Trustee to
27 continue to:
28

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(1) Accept and negotiate funds and/or payments made to the Debtor and/or Trustee on behalf of a client(s);

(2) Negotiate and pay any liens (e.g. medical liens, attorney's liens, etc.) required to effectuate the release of funds and/or payments;⁶

(3) Issue to a client(s) the agreed-upon portion of any funds and/or payments made to the Debtor and/or Trustee on behalf of a client(s) consistent with applicable agreements;

(4) In the Trustee's sole discretion and upon the Trustee's confirmation of proper amounts, issue to co-counsel and/or referral attorneys the agreed-upon portion of attorney fees and costs consistent with applicable agreements;

(5) Take any other reasonable actions and execute all documents necessary to effectuate the issuance of funds and/or payments to the Debtor's client(s); and

(6) Hold in the Estate the funds remaining after payment to the client(s), co-counsel and/or referral attorneys which would include the Debtor's fees and costs consistent with applicable agreements.

B. The Requested Relief Regarding the Terminated Cases

With respect to the Terminated Cases, the Trustee seeks authority to take all reasonable actions and execute all documents necessary to protect the client's interest in having files transitioned to the client and preserve the Estate's interest in legal fees and costs to which the Estate is entitled. This authorization would include, without limitation, authority for the Trustee to continue to:

(1) Upon request, transfer files to the client(s), or new counsel upon appropriate proof of engagement;

(2) Execute any documents reasonably necessary to effectuate a substitution of attorney or disassociation of counsel;

⁶ The Trustee is not seeking authorization to pay liens against property of the Debtor's Estate, only those liens specific to the Resolved Cases at issue such as medical liens and only after receiving and reviewing proper documentation as to the lien holder and the amount of the lien.

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(3) Employ file clerks or IT personnel, as independent contractors, to facilitate the transfer of client files to the client(s) or successor counsel;

(4) Maintain appropriate insurance, including liability insurance;

(5) Take any other reasonable actions and execute all documents necessary to effectuate the orderly transition of client files; and

(6) Take all reasonable actions to protect and preserve the legal fees and costs to which the Estate is entitled including, without limitation, the filing of notices of lien for legal fees and costs.

Although the Trustee's work in transitioning cases has largely concluded, occasionally the Trustee uncovers prior cases of the Debtor after former clients reach out to the Trustee. As such, the Trustee requests the above relief in the event that new cases of the Debtor are discovered that need to be transitioned and/or clients request their case files.

C. Additional Relief Regarding the Trustee's Limited Operations

As detailed above, the Debtor stored its files physically (previously in both the 1122 Wilshire Building and the 1126 Wilshire Building) and also electronically. Since the Court's prior authorization to retain and employ certain former employees of the Debtor as independent contractors, the Trustee has relied on their knowledge of the Debtor's record and file system in order to locate files more expeditiously. The former employees' assistance has had a positive impact on the Trustee's administration of the Estate, as their involvement has made it easier to navigate the Debtor's operations and finances, and has helped the Trustee transition case files of former clients for their protection. Moreover, these former employees were invaluable to the Trustee's efforts to vacate the 1122 Wilshire Building and relocate to the 1126 Wilshire Building. The Trustee will be vacating the 1126 Wilshire Building in the near future and relocating to the Office Space. Thus, although the Trustee's need to utilize these former employees has diminished, the need has not gone away entirely, particularly with regard to Sammy Hsu, the Debtor's former IT manager. His assistance has been and continues to be critical.

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1 During the time the Trustee has used the 1122 Wilshire Building and 1126 Wilshire
2 Building as storage facilities, the Trustee has needed to pay certain costs to access the
3 electronic and physical records (e.g. electricity, internet, liability insurance, etc.). Until the
4 Trustee fully vacates the 1126 Wilshire Building, these costs associated with the 1126
5 Wilshire Building will need to continue to be paid, along with any final moving out costs.
6 Once the Trustee moves the Debtor's computers, servers, and equipment to the Office
7 Space along with the Debtor's physical files and personal property to an off-site location
8 through the Storage Service, the Trustee will need to be able to pay the monthly costs
9 under the Court-approved agreements. The Trustee also needs to be able to pay
10 insurance and bond fees so that those assisting her in the administration of the Estate
11 and necessary visitors can safely access the 1126 Wilshire Building (until the Trustee
12 stops using it as a storage facility) and eventually the Office Space, and to limit any
13 exposure to the Estate.

14 More specifically, the Trustee seeks:

15 (1) Authority to pay the utilities, internet, and other necessary systems and
16 liability and contents insurance so that the Trustee and her team can access the 1126
17 Wilshire Building and the Office Space, the servers, and the internet to: (i) transition files,
18 physical and electronic, to successor counsel, co-counsel, and/or clients; (ii) preserve
19 and access information and files in order to protect and/or monetize the Estate's rights to
20 costs and fees owing to the Debtor for services rendered and costs advanced pre-
21 petition; and (iii) support the Trustee's professionals in their efforts to monetize claims of
22 the Estate, including but not limited to avoidance claims and/or other litigation claims;

23 (2) Authority to retain and pay certain former employees of the Debtor and/or
24 replacement temporary workers as independent contractors on an hourly basis, to assist
25 the Trustee with the limited operations described in this Motion;

26 (3) Authority to continue to retain and pay the Trustee's field agent Daphne
27 Masin at her hourly rate to assist the Trustee with the limited operations described in this
28

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1 Motion, including but not limited to assisting the Trustee with her investigation and
2 prosecution of litigation claims on behalf of the Estate;⁷ and

3 (4) Authority to pay such other necessary costs to assist with the Trustee's
4 limited operations described in this Motion and to vacate the 1126 Wilshire Building when
5 it becomes necessary.

6 The Trustee seeks authority to pay former employees and/or replacement
7 temporary workers and other operating expenses from unencumbered funds in the Estate
8 or pursuant to Court order authorizing the Trustee to use cash collateral for such
9 purposes.

10 **D. The Requested Relief Regarding the Debtor's Legal Fees and Costs**

11 The Trustee also seeks authority to file notices of lien for legal fees and costs of
12 the Debtor in cases where the Debtor was counsel of record should she deem it
13 necessary in her sole and absolute discretion.

14
15 **IV. LIMITED TRUST ACCOUNT MAINTENANCE RELIEF REQUESTED**

16 The Trustee believes that she has now identified all IOLTA, minors blocked,
17 settlement blocked or other trust bank accounts, however should her investigation reveal
18 any beyond the Existing Trust Accounts, the Trustee requests authority to allow such
19 accounts to remain at the current banks provided that such bank is an approved
20 depository and subject to confirmation by the United States Trustee's Office that such
21 bank is appropriately collateralized.⁸

22 With respect to any newly discovered minors blocked accounts, the Debtor has no
23 interest in the funds, although they are under the Debtor's Tax ID Number. The Debtor's
24 only obligation is to sign a release upon proof that the beneficiary is 18 years old. The

25
26 ⁷ On January 26, 2021, the Trustee filed an application to employ Daphne Masin as her field agent.
On March 11, 2021, the Court entered an order granting the application.

27 ⁸ The Trustee's Bond amount is based not only on the funds she is holding but also the funds in
28 these IOLTA accounts.

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1 Trustee is requesting authority to delegate that function to the bank so that the Estate has
2 no obligation whatsoever with respect to these accounts. See Declaration of Elissa D.
3 Miller. In fact, the accounts are a liability because they are interest bearing, and the
4 Debtor has to report the income, notwithstanding the income runs with the account to the
5 minor. As the Estate has no property interest in these accounts, the Trustee contends
6 that if the bank takes over the authority, the Estate should not bear the obligation of
7 having to post a bond for the funds in these minors accounts.

8 With respect to any newly discovered IOLTA, settlement blocked and/or other trust
9 bank accounts, the Trustee seeks an order authorizing the Trustee to designate the
10 Trustee as the sole signatory and directing the banks where the accounts are held to
11 comply with the Trustee's change of signatory requests. The Trustee will ensure that the
12 amount of her bond is not only sufficient to cover the amounts in her account but also the
13 amounts in the IOLTA accounts and all other accounts wherever maintained. See
14 Declaration of Elissa D. Miller.

15
16 **V. MEMORANDUM OF POINTS AND AUTHORITIES**

17 Under 11 U.S.C. § 721, "[t]he court may authorize the trustee to operate the
18 business of the debtor for a limited period, if such operation is in the best interest of the
19 estate and consistent with the orderly liquidation of the estate." See also *In re Nakhuda*,
20 2015 WL 873566 at *2 (B.A.P. 9th Cir. 2015) citing 11 U.S.C. § 721 and 6 Collier on
21 Bankruptcy ¶ 721.01 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2012).

22 Authorizing the Trustee to operate the business of the Debtor on a limited basis is
23 in the best interest of the Estate and promotes an orderly liquidation. See Declaration of
24 Elissa D. Miller. The relief requested as to the Resolved Cases will allow the Debtor's
25 clients to continue to receive funds to which they are entitled without significant delay.
26 Moreover, disbursement of client funds will allow the Trustee to preserve and set aside
27 legal fees and costs owed to the Debtor. The Trustee's request for continued authority to
28 file notices of lien in certain of the Debtor's cases similarly preserves the Debtor's legal

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1 fees and costs. With respect to the relief requested regarding the Terminated Cases, the
2 Trustee's continued authority to transition client files (should the need arise) and sign
3 substitutions of attorney not only promotes the orderly transition of the Terminated
4 Cases—it also protects the Debtor's former clients.

5 The Trustee's requests are not extraordinary and have been previously granted by
6 the Court. While the Trustee now seeks authority to pay for the Office Space and for the
7 Storage Service, the Court has already authorized the Trustee to enter into these
8 agreements. Once the Trustee utilizes the Office Space and Storage Service, the
9 Trustee's need to operate the Debtor on a limited basis will not change. The Trustee will
10 still need to pay the costs associated with accessing the Debtor's electronic and physical
11 records to administer the Estate or to provide case files and information at the request of
12 former clients. Put simply, the Trustee's requests are necessary. In addition, the Trustee
13 is currently investigating and prosecuting litigation claims on behalf of the Estate and the
14 Trustee continues to assert quantum meruit claims in the Debtor's cases. If the Trustee
15 is not authorized to operate the business of the Debtor for the limited purposes described
16 herein, the Trustee will be unable to further enhance the value of the Estate through
17 investigation and litigation of claims. The Estate may be further prejudiced if the Trustee
18 is unable to assert claims for legal fees and costs by losing access to case files and cost
19 ledgers. By operating the Debtor on a limited basis, the Trustee has made significant
20 strides in preserving the Estate. The Motion only serves to continue this progress. In
21 sum, continued operation of the Debtor's business is necessary for the Trustee to
22 continue to maximize value of the Estate, administer the Estate, and protect the Debtor's
23 former clients.

24
25 **VI. CONCLUSION**

26 For the foregoing reasons, the Trustee respectfully requests that the Court enter
27 an order:

- 28 1. Granting the Motion;

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- 1 2. Authorizing the Trustee to operate the business of the Debtor on a limited
2 basis as detailed in the Motion through June 30, 2023 – without prejudice to the Trustee's
3 right to request additional or continuing authority to operate;
- 4 3. Authorizing any newly discovered IOLTA, minors blocked, settlement
5 blocked and/or other trust bank accounts to remain open at the current banks where the
6 accounts are held, subject to the conditions set forth herein;
- 7 4. Authorizing the Trustee to be the sole signatory on any newly discovered
8 IOLTA, settlement blocked and/or other trust bank accounts, and any other account
9 where the bank requires a Court order to change the signatory and directing the banks to
10 comply with the Trustee's change of signatory requests;
- 11 5. Authorizing the Trustee to delegate authority for the release of funds in any
12 newly discovered minors blocked accounts to the banks where the accounts are held and
13 excusing the Trustee from posting a bond for the funds held in such minors blocked
14 accounts, or alternatively, authorizing the Trustee to sign off on the liquidation of the
15 account upon receipt of proper documentation from the beneficiary; and
- 16 6. For such other relief as the Court deems just and proper.

17
18 DATED: November 22, 2022

Respectfully submitted,

SMILEY WANG-EKVALL, LLP

21 By: /s/ Philip E. Strok

22 PHILIP E. STROK

23 Attorneys for Elissa D. Miller, Chapter 7
24 Trustee
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DECLARATION OF ELISSA D. MILLER

I, Elissa D. Miller, declare as follows:

1. I am the duly appointed Chapter 7 Trustee for the bankruptcy estate of Girardi Keese. I am also a partner at Greenspoon Marder, LLP. I know each of the following facts to be true of my own personal knowledge, except as otherwise stated and, if called as a witness, I could and would competently testify with respect thereto. I make this declaration in support of the *Sixth Motion for Order Authorizing Chapter 7 Trustee to: (A) Operate the Business of the Debtor on a Limited Basis Pursuant to 11 U.S.C. § 721; and (B) Maintain Current Status of Any Newly Discovered Trust Accounts* (the "Motion").

Unless otherwise defined in this declaration, all terms defined in the Motion are incorporated herein by this reference.

2. As of the Petition Date, the Debtor was counsel of record in a significant number of cases which were undertaken on a contingency basis. These cases were at varying stages. I previously caused the First Operating Motion to be filed so that I could deal with these cases and with various bank accounts [Docket No. 156]. On March 2, 2021, the Court entered an order granting the First Operating Motion.

3. When I first visited the Debtor's offices, I learned that the Debtor maintained its case files physically and electronically. I am informed that the electronic files may not be a duplicate of the physical files and vice versa. Regarding the digital records, they were maintained on two different programs depending on the type of cases. The Debtor primarily used a proprietary electronic program for its mass tort litigation cases. However, for all other cases and general office files, as well as some of the mass tort files, the Debtor stored these records in an electronic program known as iManage. The Debtor's cost ledgers and other related records were maintained in another program called Sage Accounting Software.

4. Because the Debtor's records were stored in a complicated fashion and were not easy to locate, I determined that it would be more economical and efficient for the Estate to retain certain of the Debtor's former employees who had knowledge of the

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1 Debtor's data and file maintenance processes. Accordingly, I caused the Second
2 Operating Motion to be filed so that I could retain and pay certain of the Debtor's former
3 employees, as well as pay the utilities and insurance so that these files and records could
4 remain accessible [Docket No. 180]. On February 16, 2021, the Court entered an order
5 granting the Second Operating Motion.

6 5. In sum, I have filed a total five motions requesting authority to operate the
7 business of the Debtor on a limited basis. The Court has granted all of these motions.
8 On June 29, 2022, the Court authorized me to operate the business of the Debtor on a
9 limited basis through December 31, 2022. A true and correct copy of this order obtained
10 from the Court's docket at my direction is attached hereto as Exhibit "1".

11 6. When I first accepted my appointment, I relied on certain former employees
12 of the Debtor who have helped me and my field agent more efficiently navigate the
13 Debtor's complicated file and record system. As my team and I have become more
14 familiar with the Debtor's file and record system, my reliance on these former employees
15 is no longer as critical. However, I do need to occasionally rely on these former
16 employees when certain operational and organization issues arise, so that any issues
17 can be resolved more expeditiously.

18 7. Although the Estate will no longer be using the 1126 Wilshire Building as a
19 storage facility and will be moving to the Office Space and utilizing the Storage Service in
20 the near future, I may still need to rely on certain former employees of the Debtor, like the
21 Debtor's former IT manager, in order to continue my work administering the Estate. I will
22 also need to rely on my field agent as well.

23 8. I have been collecting information as to the Debtor's bank accounts
24 throughout the case. Specifically, I have determined that in addition to deposit and
25 operating accounts, the Debtor maintained the following accounts at the following banks:

- 26 i. Citizens Business Bank – blocked minor accounts, IOLTA
27 (State Bar Trust Accounts) and a trust account for the benefit
28 of four clients;

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- 1 ii. Torrey Pines Bank – minors accounts; and
- 2 iii. Citibank – a blocked settlement account for the benefit of a
- 3 third party (which now has a zero balance);
- 4 iv. Preferred Bank - IOLTA
- 5 9. I have also determined that the Debtor maintained small IOLTA accounts at
- 6 Nano Banc, Wells Fargo Bank and U.S. Bank. These bank accounts have since been
- 7 closed, either by the bank after learning of the Debtor's case or at my request because
- 8 the bank would not change the signatory. The funds from these accounts are separately
- 9 identified and have been placed in a segregated account under my control.
- 10 10. I believe that I have now identified all IOLTA, minors blocked, settlement
- 11 blocked, or other trust bank accounts and prior orders have authorized me to maintain
- 12 these accounts pending further orders. However, additional bank accounts may be
- 13 discovered during my administration of the Estate.
- 14 11. If I later discover any minors blocked accounts, I am informed and believe
- 15 that neither the Debtor nor the Estate has any interest in these accounts. Rather, the
- 16 Debtor was and the Estate is obligated to (i) sign off on the delivery of the funds in the
- 17 account to the beneficiary when the beneficiary turns 18 and (ii) account for the income
- 18 earned on the accounts on its tax returns, notwithstanding that the interest income inures
- 19 to the benefit of the beneficiary.
- 20 12. Regarding any newly discovered IOLTA, settlement blocked, minors
- 21 blocked and/or other trust bank accounts, I will ensure that the amount of my bond is
- 22 sufficient to cover the amounts in these accounts unless otherwise ordered by the Court.

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1 13. In my business judgment and for the reasons set forth in the Motion, I
2 believe operating the Debtor's business on a limited basis as set forth in the Motion is in
3 the best interest of the Estate and promotes orderly liquidation of the Estate's assets.

4 I declare under penalty of perjury under the laws of the United States of America
5 that the foregoing is true and correct.

6 Executed on this 22nd day of November, 2022, at Los Angeles, California.

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Elissa D. Miller

EXHIBIT "1"

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7 Attorneys for Elissa D. Miller, Chapter 7
Trustee

8
9 **UNITED STATES BANKRUPTCY COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **LOS ANGELES DIVISION**

12 In re
13 GIRARDI KEESE,
14 Debtor.

Case No. 2:20-bk-21022-BR

Chapter 7

**ORDER GRANTING FIFTH MOTION
FOR ORDER AUTHORIZING CHAPTER
7 TRUSTEE TO:**

**(A) OPERATE THE BUSINESS OF THE
DEBTOR ON A LIMITED BASIS
PURSUANT TO 11 U.S.C. § 721; AND**

**(B) MAINTAIN CURRENT STATUS OF
ANY NEWLY DISCOVERED TRUST
ACCOUNTS**

**Date: June 21, 2022
Time: 2:00 p.m.
Ctrm.: 1668
255 E. Temple Street
Los Angeles, CA 90012**

24 On June 21, 2022, at 2:00 p.m., the above-captioned Court held a hearing on the
25 *Fifth Motion for Order Authorizing Chapter 7 Trustee to: (A) Operate the Business of the*
26 *Debtor on a Limited Basis Pursuant to 11 U.S.C. § 721; and (B) Maintain Current Status*

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1 *of Any Newly Discovered Trust Accounts* (the "Motion")¹ filed by Elissa D. Miller, in her
2 capacity as Chapter 7 Trustee (the "Trustee") for the bankruptcy estate (the "Estate") of
3 Girardi Keese, as Docket No. 1187. Appearances were waived. Having considered the
4 Motion and the pleadings, declarations, and exhibits filed in support thereof and no
5 objections or responses thereto, finding that notice and service of the Motion were proper
6 and that no further notice be given, and finding good cause for the relief requested in the
7 Motion,

8 **IT IS HEREBY ORDERED** that:

- 9 1. The Motion is granted;
- 10 2. The Trustee is authorized, from July 1, 2022 through December 31, 2022,
11 to operate the business of the Debtor on a limited basis as detailed in the Motion,
12 including, but not limited to, issuing checks to clients, co-counsel, and/or referral
13 attorneys, upon the Trustee's confirmation of proper amounts and consistent with
14 applicable agreements, without prejudice to the Trustee's right to request additional or
15 continuing authority to operate;
- 16 3. Any newly discovered IOLTA, minors blocked, settlement blocked and/or
17 other trust bank accounts are authorized to remain open at the current banks where the
18 accounts are held, subject to the conditions set forth in the Motion;
- 19 4. The Trustee is authorized to be the sole signatory on any newly discovered
20 IOLTA, settlement blocked and/or other trust bank accounts, and any other account
21 where the bank requires this Court's order to change the signatory and the banks shall
22 comply with the Trustee's change of signatory requests; and
- 23 5. The Trustee is authorized to delegate the authority for the release of funds
24 in any newly discovered minors blocked accounts to the banks where the accounts are
25 held, the banks are authorized to release the funds without the Trustee's signature
26 subject to the banks' receipt of proper documentation from the beneficiary, and the
27

28 ¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

1 Trustee is excused from posting a bond for the funds held in such newly discovered
2 minors blocked accounts; or alternatively, the Trustee is authorized to sign off on the
3 liquidation of the newly discovered account upon receipt of proper documentation from
4 the beneficiary.

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Date: June 29, 2022



Barry Russell
United States Bankruptcy Judge

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 3200 Park Center Drive, Suite 250, Costa Mesa, CA 92626.

A true and correct copy of the foregoing document entitled (*specify*): **SIXTH MOTION FOR ORDER AUTHORIZING CHAPTER 7 TRUSTEE TO: (A) OPERATE THE BUSINESS OF THE DEBTOR ON A LIMITED BASIS PURSUANT TO 11 U.S.C. § 721; AND (B) MAINTAIN CURRENT STATUS OF ANY NEWLY DISCOVERED TRUST ACCOUNTS MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ELISSA D. MILLER IN SUPPORT** will be served or was served (**a**) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (**b**) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) November 22, 2022 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL:

On (*date*) November 22, 2022, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Barry Russell
U.S. Bankruptcy Court
Roybal Federal Building
255 E. Temple Street, Suite 1660
Los Angeles, CA 90012

☒ Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) November 22, 2022, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

November 22, 2022
Date

James Chung
Printed Name

/s/ James Chung
Signature

ADDITIONAL SERVICE INFORMATION (if needed):

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

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Macon GA 31210-1043**

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591 Redwood Hwy, Suite 1200
Mill Valley CA 94941**

**LFG SPECIAL INVESTOR GROUP,
LLC
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200 South Virginia Street, , 8TH Fl
Reno NV 89501**

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Request for Notice

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